

## **Issues: Mercury**

Updated: 01/12/06

### **Background**

Mercury is a hazardous neurotoxin that causes brain damage and interferes with development in fetuses, infants, and small children. The largest source of mercury pollution in the United States is coal power plants, which send about 48 tons per year of mercury into the air.

Mercury emitted by coal-fired power plants falls from the air and collects in streams, lakes, and rivers, where it accumulates in fish. As it makes its way through the food chain, the concentration of mercury increases through a process called bioaccumulation. Forty-three states have issued fish consumption advisories due to high concentrations of mercury in fish, and the Food and Drug Administration and the Environmental Protection Agency have released a joint warning about the dangers of eating fish that have high levels of mercury.

### **EPA: Women, Children at Risk**

The Centers for Disease Control and Prevention estimates that 1 in 12 women of childbearing age have elevated levels of mercury in their blood. New scientific studies indicate that mercury concentrations are on average 1.7 times higher in the umbilical cord than in the mother's blood. Such findings prompted EPA recently to revise a report to state that more than one child in six born in the United States could be at risk of developmental disorders due to pre-natal exposure to high concentrations of mercury -- a number twice as high as previous estimates.

### **Favoring Industry Over Public Health**

Technology is available today to achieve a 90 percent reduction in mercury pollution from all types of coal burned in the United States. Continuing studies and tests have demonstrated that the cost of controlling mercury is similar if not less than the cost of controlling smog-forming pollution. A National Wildlife Foundation study in five states that rely heavily on coal power found that a mercury rule requiring 90 percent emissions reduction would only cost residential customers between 69 cents and about two dollars per month.

In 2000, EPA found that power-plant mercury emissions "are a threat to human health and the environment" and that it was appropriate and necessary to reduce power-plant emissions of mercury and other HAPs to the maximum extent. Rather than pursue a 90 percent reduction of current mercury emissions by 2008 required by this finding, in March 2005 the Bush administration issued a rule that requires much lower emissions reductions (70 percent) over a longer time period than the law allows, delaying cleanup by a decade or more. In order to make this change, EPA had to rule that its 2000 finding "lacked foundation," and that it is neither necessary nor appropriate to regulate any power-plant HAP emissions, including mercury.

Beyond requiring too little mercury reduction and taking too long to reach even this weak result, the rule also allows pollution trading among power plants, giving these big polluters the ability to buy and sell the right to pollute. Such a plan not only benefits corporate polluters, but also could result in "hot spots"-geographical areas of especially concentrated mercury contamination.

### **Update**

The Congressional Review Act allows Congress to review Executive Branch regulations. In July 2005, Senators Leahy (D-VT) and Snowe (R-ME) introduced a resolution to disapprove the delisting of mercury from power plants from the list of hazardous air pollutants. Unfortunately, in September that resolution was narrowly defeated by a vote of 47-51. The rule remains in question, because more than a dozen states, including places as disparate as New Mexico, Wisconsin, Pennsylvania and Massachusetts, have sued EPA, trying to force stronger action. They are joined by numerous public health and environmental organizations, including the American Academy of Pediatrics and the American Nursing Association. LCV continues to work to reduce mercury pollution, and ensure that power plants must clean up mercury and other hazardous air pollution. Check back for updates.

## **Issues: Energy Policy**

Updated: 01/09/06

### **Update**

Americans need and deserve a smarter, cleaner energy policy that reduces our dependence on polluting energy sources, safeguards our natural resources, and significantly increases energy efficiency and renewable energy.

Unfortunately, the energy bill that President Bush signed into law on August 8, 2005 fails to reduce our dependence on foreign oil, provide relief to consumers, or strengthen our national security. Instead, it threatens drinking water by allowing the underground injection of diesel fuel and other chemicals during oil and gas development and exempts oil and gas construction activities from the Clean Water Act. It also authorizes an invasive seismic inventory of oil and gas resources in the Outer Continental Shelf off our nation's coasts, which could harm marine wildlife and pave the way for more drilling in currently pristine areas. As if all that weren't bad enough, the new energy law also rewards energy companies that are already raking in record profits, like Exxon Mobil, with massive subsidies.

The new energy policy is a missed opportunity to address some of our most pressing energy problems. It does not



include the few bright spots that were in the original Senate bill, like a requirement that ten percent of our energy come from renewable sources by 2020. The new law also fails to include any provisions to address global warming. In short, the new energy policy is a backward-looking bill that is not worthy of the 21st century.

The League of Conservation Voters is calling on Congress to mitigate the harmful provisions contained in the new energy law, and we will continue to fight for clean energy. The good news is that the states are leading the way; currently twenty states and the District of Columbia have already adopted renewable energy standards.

#### **Issues: Clean Water**

Updated: 02/05/05

##### **Background**

The Clean Water Act was enacted to "restore the physical, chemical and biological integrity of our nation's waters."

In the Clean Water Act, passed on October 18, 1972, Congress made it clear that it intended to provide federal protections for the nation's waters to the full extent allowed under the Commerce Clause of the Constitution.

Since then, numerous attempts to narrow this definition have failed. The most recent attempt, by the Bush administration, was an attempt to use a narrow 2001 Supreme Court ruling to justify sweeping changes to Clean Water jurisdiction.

On January 15, 2003, the Bush Administration published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register, raising questions about the jurisdiction of the Clean Water Act. Simultaneously, they released a guidance memo to EPA and Corps of Engineers field staff regarding Clean Water Act jurisdiction over certain so-called "isolated," non-navigable, intrastate waters.

The changes proposed by Bush would have had profound effects on the nation's waterways. The waterways under question included "ephemeral waters -- those fed by rain or snowmelt rather than groundwater, and that don't flow at least six months a year." If it had been adopted, at least 20% of remaining wetlands (excluding Alaska) and roughly 60% of streams and other water bodies would have been treated as not covered by the Act. All of these waters are critical to the environment and economy as they replenish groundwater, filter drinking water, store floodwaters, and provide essential fish and wildlife habitat.

##### **Update**

After 133,000 public comments, almost all of them opposing, as well as criticism from Congress, nearly 40 State governments, and hunting and fishing groups, the Bush Administration announced it would abandon the rulemaking efforts in December of 2003.

Although the Bush Administration announced it would stop pursuing its proposal, it did not rescind the accompanying directive to the field offices of the Army Corps of Engineers. This directive continues to require Corps field staff to get permission from Washington headquarters before making any move to protect the waterways from development or pollution, while requiring no such permission to allow potentially destructive activities.

#### **Issues: Clean Air: NSR**

Updated: 01/12/06

##### **Background**

Power plants, refineries and factories emit gases such as sulfur oxides, nitrogen oxides, particulate matter, volatile organic compounds, carbon monoxide and various heavy metals that pose risks to human health and the environment. Older, coal-fired power plants are the biggest sources of harmful emissions. The Clean Air Act was designed to regulate these harmful emissions. However, a major loophole in the Clean Air Act allows older industrial facilities to remain largely unregulated. Power plants, refineries and chemical plants built before 1977 may be emitting up to an average of 10 times more pollution than newer plants.

The Clean Air Act's New Source Review program requires these facilities (and other major source of pollution) to install modern pollution control technology when they make changes that increase pollution. Since 1977, NSR has been responsible for the reduction of millions of pounds of soot and smog forming pollutants being released into our air from power plants, refineries and other big polluters.

On December 31, 2002, the Bush Administration issued rules to weaken the New Source Review program. Less than a year later, on October 27, 2003, the Environmental Protection Agency (EPA) issued additional weakening rules that expanded the definition of "routine maintenance" so that most improvements to facilities would not require new pollution controls. Major plant changes that cost tens to hundreds of millions of dollars and increase pollution by hundreds or thousands of tons would now qualify as "routine maintenance" and be allowed without any associated improved pollution control. Additional changes that would further vitiate the program were proposed in 2005.

##### **What are the impacts?**

Under the proposed Bush Administration changes, New Source Review will rarely, if ever, require an old factory to clean up its act. Big industrial polluters will be able to avoid triggering NSR, thereby allowing older, dirtier facilities to



go on polluting indefinitely. Huge potential benefits from NSR, such as the clean-up of old coal-fired power plants, will be lost. States will have to find other, potentially more expensive, ways to protect the health of citizens in communities with poor air quality standards. The EPA has acknowledged that the soot and smog caused by industrial air pollution are responsible for tens of thousands of asthma attacks, hospitalizations, and premature deaths every year. Air pollution shrouds many of our national parks and leaves toxic chemicals in our streams and lakes. Under the revised NSR rules, these harmful impacts will only worsen.

#### **Update**

In December 2003, a federal appeals court blocked the implementation of some of the Bush Administration's changes to NSR. A number of state attorneys general and cities brought the challenge arguing that public harm would result from the increased pollution levels caused by the changes. The order was temporary, but the judges cited the "irreparable harm" that would result "and likelihood of success" of the case.

New Source Review went on the backburner during the presidential and congressional campaign season in 2004 and legal challenges from environmental groups and state attorneys general await final rulings from a federal appeals court. The courts ruled on the first of these challenges in 2005, setting aside some aspects of the initial rule change, while allowing others to stand. The other challenges continue to move forward.

#### **Issues: Clean Air: Clear Skies**

Updated: 01/12/06

#### **Background**

The Bush administration's air pollution plan, dishonestly named "The Clear Skies Initiative", seeks to replace proven Clean Air Act protections with a market-driven "cap-and-trade" program for sulfur dioxide, nitrogen oxides and mercury emissions. The plan purports to reduce emissions of these pollutants by approximately 70 percent each by 2018. However, the plan proposes no steps to address emissions of pollutants that cause global warming, most notably carbon dioxide.

The plan weakens current programs, delaying deadlines for meeting clean air standards across the country and removing programs that have demonstrated effectiveness in reducing air pollution. These include the New Source Review program as well as the part of the Clean Air Act that allows states to seek relief from pollution blowing in from other states. If kept on its current trajectory, the Clean Air Act already in place will succeed in reducing sulfur dioxide emissions to 2 million tons per year by 2012. The Bush plan only proposes to reduce sulfur dioxide emissions to 3 million tons and will achieve this number only by 2018. Similarly, while the Bush plan promises a nearly 50 percent reduction in mercury emissions by 2010, the current Clean Air Act properly enforced would achieve more, promising a 90 percent reduction by 2008. The Bush plan delays strict enforcement of standards until 2015, and allows for additional delays once current deadlines expire.

Additionally, the Bush plan has a "cap-and-trade" philosophy that will allow "hot spots" to develop, meaning some regions of the country would experience more pollution than others and some power plants and industry would have the right to pollute at much higher levels than others. The concentrations of pollutants that result lead to public health problems and threaten wildlife. A June 2004 study in the journal *Environmental Toxicology and Chemistry* found that mercury contamination in birds was more severe in areas near mercury emitting coal-fired power plants.

#### **Update**

Hearings were held in January and February 2005, and on March 9, 2005 the committee debated and ultimately voted to reject S. 131 on a bipartisan vote of 9 to 9. Following the vote, the Environmental Protection Agency (EPA) began to conduct such an analysis and released its findings on October 27, 2005. The analysis demonstrated that existing laws achieve the same pollution reductions as Clear Skies, and do so at a lower cost.

The Congressional Research Service issued a report on November 23, 2005 charging that the EPA analysis favored the Clear Skies Initiative by overvaluing the benefits of the Bush Administration's proposal and overstating the costs of the alternative bills. The faulty EPA report is a disgraceful example of misinformation being used to advance a political agenda at the expense of public health and an uncontaminated environment.